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August 4, 2005

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 22054

Re: MB Docket No. 03-15
Pegasus Satellite Communications, Inc.
WPME-TV, Lewiston, ME (Fac. No. 48408)
File No. BPCDT-19980831KE
Request for Extension of Deadline to Construct DTV “Checklist” Facility

Dear Ms. Dortch:

Pegasus Satellite Communications, Inc. (“PSC”), licensee of commercial television station WPME(TV), Lewiston, Maine (“WPME”),¹ by its attorneys, respectfully requests an extension of the August 4, 2005 deadline to construct and operate a digital television (“DTV”) “checklist” facility. An extension of the construction deadline is warranted based on PSC’s long-term financial distress and DTV buildout delays arising from circumstances beyond PSC’s control. As explained in detail below, PSC recently acquired WPME following a lengthy and contested Chapter 11 bankruptcy proceeding and remains under obligation by the supervising bankruptcy court to minimize unnecessary expenses. Rather than expending substantial funds to build a temporary DTV “checklist” facility that will later be abandoned, PSC currently is pursuing the construction of a more cost-effective DTV facility on WPME’s analog channel that will provide better service to the public than a DTV “checklist” facility.

¹ As explained below, WPME’s license recently was assigned from KB Prime Media LLC (“KB Prime”) to PSC. See FCC File No. BALCT-20040227AAA (granted Feb. 10, 2005).

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WPME is licensed to operate on analog channel 35 and the station selected its analog channel for post-transition DTV operation in the first round of DTV channel elections.² In the DTV Table of Allotments, WPME was allotted DTV channel 28 with a maximum effective radiated power (“ERP”) of 50 kW and an antenna height of 258 meters.³ On August 31, 1998, the former licensee of WPME filed a DTV “maximization” application requesting a DTV construction permit on the station’s allotted DTV channel 28 with a maximum ERP of 200 kW ERP and an antenna height of 251 meters.⁴ The “maximization” application was accepted for filing on September 10, 1998.⁵ On June 22, 2001, the “maximization” application was amended to increase the proposed maximum ERP to 215 kW.⁶ WPME’s application for a DTV construction permit, as amended, has remained pending before the Federal Communications Commission (“FCC” or “Commission”) for nearly seven years due to unresolved international coordination issues with Canada. As a result, WPME does not yet have a DTV construction permit.

In the *Second DTV Periodic Review*, the Commission determined that television stations that have not yet received a DTV construction permit nevertheless should be required to construct and operate DTV “checklist” facilities that conform with the parameters of the DTV Table of Allotments.⁷ The Commission established August 4, 2005 as the deadline for such

² See FCC File No. BFRECT-20050210AGO. WPME has received channel 35 as its tentative DTV channel designation subject to international coordination. See DTV Tentative Channel Designations for 1,554 Stations Participating in the First Round of DTV Channel Elections, Public Notice, DA 05-1743 (rel. June 23, 2005).

³ See *Advanced Television Systems and Their Impact on upon the Existing Television Broadcast Service*, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, 14 FCC Rcd 1348, Appendix B (DTV Table of Allotments) at B-20 (1998).

⁴ See FCC File No. BPCDT-19980831KE. By “maximizing,” stations propose power and antenna height increases above the values allotted in the DTV Table of Allotments that extend the service area of the DTV facilities beyond the analog replication facilities. To be eligible to maximize their DTV facilities, stations were required to have filed an application or notice of intent to seek maximization by December 31, 1999, and to have filed a bona fide application for maximization by May 1, 2000. See 47 U.S.C. § 336(f)(1)(D), (7)(A)(ii)(IV). WPME’s application for maximization, which was filed on August 31, 1998 satisfied these deadlines.

⁵ See Broadcast Applications, Public Notice, Rep. No. 24323 (rel. Sept. 10, 1998).

⁶ See FCC File No. BPCDT-19980831KE, as amended.

⁷ See *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279, ¶111 (2004) (“*Second DTV Periodic Review*”). A DTV “checklist” facility has power and antenna height equal to or less than those specified in the DTV Table of Allotments and is located within a specified minimum distance from the station’s reference coordinates in the DTV Table of Allotments. See *id.* at n.245.

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stations to construct and operate DTV “checklist” facilities.⁸ The Commission also stated that it would entertain requests for extension of this deadline on a case-by-case basis using the criteria previously established for extending the DTV buildout deadlines for stations with a DTV construction permit.⁹

In the *First DTV Periodic Review*, the Commission determined that, in assessing a request for extension of a DTV construction deadline, it would consider the financial resources of the station and its ability to afford the cost of meeting the minimum buildout requirements.¹⁰ An extension request based on this ground must be supported by an itemized estimate of the cost of meeting the minimum buildout requirements and a detailed statement explaining why the applicant’s financial status, as viewed over an economically significant period of time, precludes such an expenditure.¹¹ The applicant also must explain why its good faith efforts to meet the applicable deadline were unsuccessful and indicate when it reasonably expects to complete construction.¹² The Commission also reiterated its willingness to grant an extension of a DTV construction deadline if a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the broadcaster’s control.¹³ As explained below, PSC satisfies these criteria, and an extension of the August 4, 2005 deadline to construct and operate a DTV “checklist” facility for WPME is warranted.

On February 27, 2004, the former licensee of WPME, KB Prime Media LLC (“KB Prime”), filed an application to assign WPME’s license to PSC. During the pendency of that application, PSC and certain of its subsidiaries experienced serious financial difficulties and on June 2, 2004, filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, District of Maine (the “Bankruptcy Court”).¹⁴ At that time, PSC and certain of its subsidiaries commenced operating as a debtors-in-possession under the Bankruptcy

⁸ See *id.* at ¶113.

⁹ See *id.*

¹⁰ See *Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594, ¶46 (2001) (“*First DTV Periodic Review*”).

¹¹ See *id.*

¹² See *id.*

¹³ See *id.* at ¶ 44; see also *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, ¶ 77 (1997).

¹⁴ See *Pegasus Satellite Television Inc. et al.*, Case Number 04-20878 (Chapter 11) (Bnkr. D. Maine).

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Court's oversight.¹⁵ On April 15, 2005, before KB Prime and PSC consummated the assignment of WPME's license, the Bankruptcy Court approved PSC's Chapter 11 bankruptcy plan. The bankruptcy plan took effect on May 5, 2005, at which time PSC came under the control of The PSC Liquidating Trust (the "Liquidating Trust") c/o Ocean Ridge Capital Advisors, LLC, as Trustee ("Trustee").¹⁶ Subject to the jurisdiction of the Bankruptcy Court, the Trustee now makes all operating decisions and is charged with preserving PSC's estate and finding a buyer for the broadcast assets of PSC, including WPME's license.

After PSC entered debtor-in-possession status, the Commission consented to the assignment of WPME's license from KB Prime to PSC on February 10, 2005.¹⁷ However, due to circumstances beyond its control, PSC was unable to consummate the assignment of WPME's license within the required 90-day timeframe. In particular, KB Prime filed adversarial motions in the Bankruptcy Court contesting the ability of the Trustee to acquire WPME's license and other assets in PSC's estate. Consequently, PSC sought and obtained from the Commission two extensions of the deadline to consummate WPME's license assignment. The most recent extension was granted for a period ending on August 12, 2005. The Bankruptcy Court dismissed KB Prime's motions contesting the Trustee's capacity to control WPME's license. However, due to delays arising from KB Prime's challenge in the Bankruptcy Court, PSC was not able to consummate the assignment of WPME's license until July 25, 2005, only ten days before the deadline the Commission had established for WPME to construct and operate a DTV "checklist" facility.¹⁸

PSC now seeks an extension of the deadline to construct a DTV "checklist" facility for WPME. Such an extension is warranted on several grounds. First, PSC has been financially distressed during an economically significant period of time. As a result of its bankruptcy, PSC operated as a debtor-in-possession from June 2, 2004 until May 5, 2005, and presently is under the control of the Trustee of the Liquidating Trust. Both PSC and the Trustee operate subject to the oversight of the Bankruptcy Court. In particular, the Bankruptcy Court requires both PSC, as

¹⁵ Applications for the *pro forma* assignment of the FCC authorizations then held by PSC and its debtor-in-possession subsidiaries were granted on December 23, 2004. See File Nos. BALCT-20040702ADJ et al.

¹⁶ The Commission consented to the *pro forma* transfer of control of PSC DIP to the Liquidating Trust on April 19, 2005, and the Liquidating Trust notified the Commission of the consummation of the *pro forma* transfer of control of PSC DIP to the Liquidating Trust on May 11, 2005. See FCC File No. BTCCT-20050411AAR.

¹⁷ See FCC File No. BALCT-20040227AAA.

¹⁸ PSC notified the Commission of the consummation of WPME's license assignment on July 28, 2005.

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a former debtor-in-possession entity, and the Trustee to minimize expenses and preserve the value of the PSC estate.

The Attachment to this request provides an itemized estimate of the cost to construct a minimal DTV facility for WPME on its allotted DTV channel 28. It is estimated that the cost of constructing such a facility will be approximately \$200,000. In addition to these itemized costs, it is estimated that the cost of leasing tower space for WPME's digital antenna will be approximately \$4500 per month. Such expenses are unnecessary and are unlikely to be approved by the Bankruptcy Court because, as explained below, WPME may abandon its current proposal to operate on DTV channel 28 in favor of a more cost-effective DTV facility on the station's analog channel.

In addition, WPME's DTV buildout has been delayed due to circumstances beyond PSC's control. As explained above, during the Bankruptcy Court proceedings initiated by KB Prime concerning the Trustee's ability to acquire WPME's license, it remained uncertain whether PSC would in fact have been able to acquire WPME. Until those proceedings were resolved, PSC was unable to consummate the assignment of WPME's license. The consummation of WPME's license assignment did not occur until July 25, 2005, only ten days before the August 4, 2005 deadline the Commission established for the construction of DTV "checklist" facilities. Consequently, PSC had no right to own WPME and was not in a position to make decisions concerning the station's DTV buildout until shortly before the Commission's established construction deadline. Within that short timeframe, it was impossible for PSC to construct and operate a DTV "checklist" facility.

PSC currently is exploring long-term alternatives to WPME's operation on DTV channel 28 that would eliminate Canadian interference problems and permit the station to construct a more desirable DTV facility. One such alternative is to construct a DTV facility on WPME's analog channel 35 instead of its allotted DTV channel 28.¹⁹ Such a facility would provide better coverage and service to the public than a "checklist" facility. PSC currently anticipates that it can complete the construction of a DTV facility for WPME on channel 35 on or before the "use-it-or-lose-it" replication deadline of July 1, 2006, to which the station is subject. Thus, there are more expeditious and cost-effective long-term solutions for WPME's DTV buildout than requiring the station to construct a costly "checklist" facility on a channel that most likely will be abandoned in the near future.

¹⁹ PSC has scheduled a meeting with the staff of the Media Bureau to discuss this alternative and other alternatives to WPME's operation on DTV channel 28.

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In sum, an extension of WPME's DTV construction deadline is justified because of PSC's long-term financial distress and PSC's inability to construct WPME's DTV facilities due to circumstances beyond its control. The uncertainties surrounding PSC's lengthy and contested bankruptcy proceeding prevented PSC from acquiring WPME until shortly before the Commission's established construction deadline. Now that PSC has acquired WPME's license, it is exploring long-term solutions for WPME's DTV buildout that will permit the station to construct more desirable DTV facilities. These long-term solutions will avoid the international coordination problems that have hindered WPME's pending DTV construction permit application and will result in the expeditious construction of a DTV facility that provides better service to the public than a DTV "checklist" facility.

For all of the foregoing reasons, PSC respectfully requests an extension of the August 4, 2005 deadline to construct and operate a DTV "checklist" facility for WPME.

Please direct any questions or inquiries regarding this matter to the undersigned.

Respectfully submitted,

/s/

Tom W. Davidson, Esq.

cc: Shaun Maher, Esq. (via e-mail)

Attachment

KB PRIME MEDIA

WPME DIGITAL TRANSMITTER PROJECT

Minimal Digital Facility (STA)

Prepared By: Lee Carpenter

Date: 6/1/05

Item	Qty	Description	Department	Cost
1	1	Antenna System & Transmission Line	Antenna	20,000
2	1	Antenna Shipping	Antenna	500
3	1	Antenna System Installation	Antenna	12,000
4	1	DTV Transmitter System - 500 Watt	Antenna	90,000
5	1	Transmitter Installation & Proof	Transmitter	8,000
6	1	Transmitter Shipping	Transmitter	1,000
7	1	Transmitter Electrical Installation	Transmitter	5,000
8	1	Engineering Research	Project	1,500
9	1	DTV Notifications Per FCC Regs	Project	1,500
10	1	Legal and FCC Fees	Project	2,000
11	1	PSIP Requirements / Equipment / Compliance	Transmitter	50,000
PROJECT TOTAL				191,500